



U.S. Department of Justice

Immigration and Naturalization Service

**DZ**

OFFICE OF ADMINISTRATIVE APPEALS  
425 Eye Street N.W.  
ULLB, 3rd Floor  
Washington, D.C. 20536



File: WAC 99 120 52971 Office: California Service Center

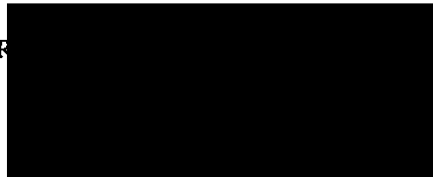
Date: SEP 14 2000

IN RE: Petitioner:  
Beneficiary:



Petition: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act, 8 U.S.C. 1101(a)(15)(H)(i)(b)

IN BEHALF OF PETITIONER



**Public Copy**

**INSTRUCTIONS:**

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,  
EXAMINATIONS

Identifying data deleted to  
prevent clearly unwarranted  
invasion of privacy

Terrance M. O'Reilly, Director  
Administrative Appeals Office

**DISCUSSION:** The nonimmigrant visa petition was denied by the director and is now before the Associate Commissioner, Examinations, on appeal. The appeal will be dismissed.

The petitioner is a manufacturer of neonatal incubators, open warmers, and associated accessories. It seeks to employ the beneficiary as a service engineer - Middle East region for a period of three years. The director determined the petitioner had not established that the job offered qualifies as a specialty occupation.

On appeal, counsel argues that the offered position requires more than just the simple repair of equipment. Counsel explains that the offered position does not offer excessive service in the Middle East as the position involves the training of and interfacing with plants in the United States. Counsel states that the position is a specialty occupation and the beneficiary is qualified to perform the duties of a specialty occupation.

Section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1101(a)(15)(H)(i)(b), provides in part for nonimmigrant classification to qualified aliens who are coming temporarily to the United States to perform services in a specialty occupation. Section 214(i)(1) of the Act, 8 U.S.C. 1184(i)(1), defines a "specialty occupation" as an occupation that requires theoretical and practical application of a body of highly specialized knowledge, and attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States.

Pursuant to section 214(i)(2) of the Act, 8 U.S.C. 1184(i)(2), to qualify as an alien coming to perform services in a specialty occupation the beneficiary must hold full state licensure to practice in the occupation, if such licensure is required to practice in the occupation. In addition, the beneficiary must have completed the degree required for the occupation, or have experience in the specialty equivalent to the completion of such degree and recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

Pursuant to 8 C.F.R. 214.2(h)(4)(iii)(B), the petitioner shall submit the following with an H-1B petition involving a specialty occupation:

1. A certification from the Secretary of Labor that the petitioner has filed a labor condition application with the Secretary,
2. A statement that it will comply with the terms of the labor condition application for the duration of the alien's authorized period of stay, and

3. Evidence that the alien qualifies to perform services in the specialty occupation.

The petitioner has provided a certified labor condition application and a statement that it will comply with the terms of the labor condition application.

Pursuant to 8 C.F.R. 214.2(h)(4)(iii)(C), to qualify to perform services in a specialty occupation, the alien must meet one of the following criteria:

1. Hold a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
2. Hold a foreign degree determined to be equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
3. Hold an unrestricted State license, registration, or certification which authorizes him or her to fully practice the specialty occupation and be immediately engaged in that specialty in the state of intended employment; or
4. Have education, specialized training, and/or progressively responsible experience that is equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation and have recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

An educational evaluation provided for the record equates the beneficiary's [REDACTED] earned at [REDACTED] in [REDACTED] to that of a bachelor of science degree in electrical engineering awarded by a regionally accredited university in the United States. Accordingly, it is concluded that the beneficiary qualifies to perform the duties of a specialty occupation.

The term "specialty occupation" is defined at 8 C.F.R. 214.2(h)(4)(ii) as:

an occupation which requires theoretical and practical application of a body of highly specialized knowledge in fields of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which requires the attainment

of a bachelor's degree or higher in a specific specialty, or its equivalent, as a minimum for entry into the occupation in the United States.

Pursuant to 8 C.F.R. 214.2(h)(4)(iii)(A), to qualify as a specialty occupation, the position must meet one of the following criteria:

1. A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position;
2. The degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree;
3. The employer normally requires a degree or its equivalent for the position; or
4. The nature of the specific duties is so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

The duties of the offered position upon initial submission were listed as:

The position offered here is as the Service Engineer for the [REDACTED]. The duties of the position involve the performance of local and international installations, set-up and maintenance of neonatal incubators, open warmers, and associated options. This position is also supervisory in nature, and duties include providing technical training to the Maintenance Engineers and Technicians at distributor sites and at the San Diego factory; providing technical interfacing between MediCare Industries and the medical group in [REDACTED] supervise the assembly and control processes of the company's incubators. Finally, the position involves the promotion of MediCare's line of products to new service regions, promotion of the accompanying accessories and options, and the sale of new repair parts and maintenance contracts.

The record shows that the beneficiary would earn 3% commissions on the sales that he makes and 6% commissions on maintenance contracts.

The petitioner has failed to establish that any of the four factors enumerated above are present in this proceeding. The petitioner has

not shown that it has, in the past, required the services of individuals with baccalaureate or higher degrees in a specialized area for the proffered position. In addition, the petitioner has not shown that similar firms require the services of such individuals in parallel positions.

In these proceedings, the duties of the position are dispositive and not the job title. The offered position appears to combine the duties of an engineering technician with those of a marketing manager. The Department of Labor's Occupational Outlook Handbook (Handbook), 2000-2001 edition, at page 97 finds no requirement of a baccalaureate or higher degree in a specialized area for employment as an engineering technician. Some engineering technicians hold baccalaureate degrees while others do not. Training is available at technical institutes, junior and community colleges, extension divisions of colleges and universities, public and private vocational-technical schools, or through the armed forces. Such training usually takes two years.

The Handbook at page 25 also finds no requirement of a baccalaureate degree in a specialized area for employment as a marketing manager. A wide range of educational backgrounds are considered suitable for entry into marketing managerial positions. Some employers prefer degrees in business administration but bachelor's degrees in various liberal arts fields are also acceptable. Certain personal qualities and participation in company training programs are often considered as significant as the beneficiary's specific educational background. In view of the foregoing, it is concluded that the petitioner has not demonstrated that the offered position is a specialty occupation within the meaning of regulations.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act. 8 U.S.C. 1361. The petitioner has not sustained that burden.

**ORDER:** The appeal is dismissed.